

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

**Matthew Lepow;
Jenifer Lepow;
Almaden Valley Nursery, Inc., a
California Corporation**

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Matthew Lepow; Jenifer Lepow; Almaden Valley Nursery, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendants Matthew Lepow and Jenifer Lepow owned the real property located at or about 15800 Almaden Expressway, San Jose, California, between

1 July 2019 and July 2020.

2 3. Defendants Matthew Lepow and Jenifer Lepow own the real property
3 located at or about 15800 Almaden Expressway, San Jose, California,
4 currently.

5 4. Defendant Almaden Valley Nursery, Inc. owned Almaden Valley
6 Nursery located at or about 15800 Almaden Expressway, San Jose, California,
7 between July 2019 and July 2020.

8 5. Defendant Almaden Valley Nursery, Inc. owns Almaden Valley Nursery
9 (“Nursery”) located at or about 15800 Almaden Expressway, San Jose,
10 California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein is
16 responsible in some capacity for the events herein alleged, or is a necessary
17 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
18 the true names, capacities, connections, and responsibilities of the Defendants
19 are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California’s Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to the Nursery in July 2019, August 2019 and July 2020
7 with the intention to avail himself of its goods motivated in part to determine
8 if the defendants comply with the disability access laws.

9 11. The Nursery is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
12 to provide wheelchair accessible parking in conformance with the ADA
13 Standards as it relates to wheelchair users like the plaintiff.

14 13. The Nursery provides parking to its customers but fails to provide
15 wheelchair accessible parking.

16 14. A few problems encountered by the plaintiff is that the parking space
17 reserved for persons with disabilities had a faded parking space and did not
18 have a "NO PARKING" warning in it. Additionally, there was no an ADA
19 signage in front of the parking space. Moreover, there were slopes in the
20 parking space reserved for persons with disabilities that exceeded 2.1% and
21 there were not enough parking spaces for wheelchair users in the parking lot.

22 15. Plaintiff believes that there are other features of the parking that likely
23 fail to comply with the ADA Standards and seeks to have fully compliant
24 parking available for wheelchair users.

25 16. On information and belief the defendants currently fail to provide
26 wheelchair accessible parking.

27 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
28 to provide wheelchair accessible sales counters in conformance with the ADA

Standards as it relates to wheelchair users like the plaintiff.

18. The Nursery provides sales counters to its customers but fails to provide wheelchair accessible sales counters.

19. A problem that plaintiff encountered was that the sales counter was too high and there was no lowered portion of the sales counter suitable for wheelchair users.

20. Plaintiff believes that there are other features of the sales counters that likely fail to comply with the ADA Standards and seeks to have fully compliant sales counters available for wheelchair users.

21. On information and belief the defendants currently fail to provide wheelchair accessible sales counters.

22. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

23. As a wheelchair user, the plaintiff benefits from and is entitled to use wheelchair accessible facilities. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

24. The failure to provide accessible facilities created difficulty and discomfort for the Plaintiff.

25. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

26. The barriers identified above are easily removed without much difficulty or expense. They are the types of barriers identified by the Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of access if complete removal were not achievable.

27. Plaintiff will return to the Nursery to avail himself of its goods and to

1 determine compliance with the disability access laws once it is represented to
2 him that the Nursery and its facilities are accessible. Plaintiff is currently
3 deterred from doing so because of his knowledge of the existing barriers and
4 his uncertainty about the existence of yet other barriers on the site. If the
5 barriers are not removed, the plaintiff will face unlawful and discriminatory
6 barriers again.

7 28. Given the obvious and blatant nature of the barriers and violations
8 alleged herein, the plaintiff alleges, on information and belief, that there are
9 other violations and barriers on the site that relate to his disability. Plaintiff will
10 amend the complaint, to provide proper notice regarding the scope of this
11 lawsuit, once he conducts a site inspection. However, please be on notice that
12 the plaintiff seeks to have all barriers related to his disability remedied. See
13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
14 encounters one barrier at a site, he can sue to have all barriers that relate to his
15 disability removed regardless of whether he personally encountered them).

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 30. Under the ADA, it is an act of discrimination to fail to ensure that the
24 privileges, advantages, accommodations, facilities, goods and services of any
25 place of public accommodation is offered on a full and equal basis by anyone
26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADA Standards.

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to the
13 maximum extent feasible, the path of travel to the altered area and
14 the bathrooms, telephones, and drinking fountains serving the
15 altered area, are readily accessible to and usable by individuals
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 31. When a business provides parking for its customers, it must provide
18 accessible parking.

19 32. Here, accessible parking has not been provided in conformance with the
20 ADA Standards.

21 33. When a business provides facilities such as sales or transaction counters,
22 it must provide accessible sales or transaction counters.

23 34. Here, accessible sales or transaction counters have not been provided in
24 conformance with the ADA Standards.

25 35. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 36. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 37. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

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7
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
10 Code § 51-53.)

11 38. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
14 that persons with disabilities are entitled to full and equal accommodations,
15 advantages, facilities, privileges, or services in all business establishment of
16 every kind whatsoever within the jurisdiction of the State of California. Cal.
17 Civ. Code § 51(b).

18 39. The Unruh Act provides that a violation of the ADA is a violation of the
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 40. Defendants’ acts and omissions, as herein alleged, have violated the
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
22 rights to full and equal use of the accommodations, advantages, facilities,
23 privileges, or services offered.

24 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

28 42. Although the plaintiff encountered frustration and difficulty by facing

1 discriminatory barriers, even manifesting itself with minor and fleeting
2 physical symptoms, the plaintiff does not value this very modest physical
3 personal injury greater than the amount of the statutory damages.

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000 for each offense.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16 Dated: November 6, 2020

CENTER FOR DISABILITY ACCESS

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18 By:



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21 Amanda Seabock, Esq.
22 Attorney for plaintiff
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